

## HARDWARE SYSTEM MAINTENANCE AND SOFTWARE SUPPORT TERMS AND CONDITIONS

**1. DEFINITIONS:** "Systems" means the System and Options indicated on the front of the Agreement. "Software" means the software in the System and includes only those software programs designed by Agfa for Prepress workflow and does not include programs designed for word processing, accounting, financial or other general business programming applications. "Upgrade" means a version of software designated as such by Agfa that includes feature enhancements and new functionality beyond that contained in the customer's current version. "Revision" means a version of the software designated as such by Agfa that revises or corrects inefficiencies or defects such as "bugs".

**2. SYSTEM MAINTENANCE:** Agfa agrees to perform the following maintenance on the System at the Site for the term of this Agreement: (1) emergency maintenance when requested by the Customer and deemed necessary by Agfa when the System is not operational and (2) preventive maintenance twice 1 and 2 and requested by customer that Agfa considers necessary for proper operation of the System. This maintenance includes labor, travel, and replacement parts at no additional charge to Customer. If maintenance is performed during normal Agfa working hours. System Maintenance performed outside normal working hours and Software services not covered by this Agreement will be charged to Customer at the full rate then in effect. Agfa will use its best reasonable efforts to respond to maintenance calls with its first available field support person. If Customer is entitled to an uptime guarantee under Agfa's SelectSupport Program, as may be in effect at the commencement of this agreement, such guarantee is limited to Agfa connected hardware that is in an inoperable (hard-down) state due to physical failure of a component. This guarantee is not available on Star RIPS, SelectSite5000 or Sherpa Systems and does not include intermittent problems or problems caused by the incompatible interaction of an Agfa-connected product with a third party vendor's product. This guarantee excludes those problems associated with software upgrades from a third party that caused an inoperable condition not related to hardware failure. Customer must register a claim in obtain credit on a renewal contract for failure to meet uptime guarantee prior to renewal. This shall be the customer's sole remedy for failure to meet the uptime guarantee.

**3. SOFTWARE SUPPORT:** Agfa agrees to provide the following Software Support: (1) telephone consultation during the hours of 9:00 a.m. to 5:00 p.m. local time, Monday through Friday, exclusive of Agfa holidays; (2) Software maintenance revisions and Software reference manuals made available during the term of this Agreement; and (3) an Agfa newsletter regarding Software enhancements, news releases and application hints. Customer agrees that all Software, change orders, and updates are provided subject to the applicable Agfa Purchase, Lease, Rental, or Conditional Sale Agreement. No on-site Software services are included under this Agreement. Software services not covered by this Agreement, and requested by Customer, may be provided at Agfa's then effective rates and terms. Operator training or System Manager training are not provided under this Agreement.

**4. EXCLUSIONS:** System maintenance provided by Agfa under this Agreement does not include: (1) Software Upgrades and/or new version releases; (2) resolution of third party system and/or network failures; (3) processor rollers, fusers, beltlines, lamp/bulbs and glass parts; (4) repair of damage caused by customer's negligence, inadequate electrical power, accident, fire, water, or power line conditions; or (5) over hauling or cleaning of the system. Operating supplies, accessories including image setter cassettes and on-site Software services are not included under this Agreement.

**5. CUSTOMER OBLIGATIONS:** Customer agrees to comply with all Agfa installation and operating instructions including, but not limited to, regular cleaning of processors. Customer shall not: (1) abuse, misuse, or neglect the System or Software; (2) modify or make attachments to the System or Software without prior authorization by Agfa; (3) operate the System or Software in a location with excessive dirt, dust, moisture, fumes, improper humidity or extremes of temperature; (4) allow maintenance of the System or Software by others without authorization from Agfa; (5) use or combine the System or Software with systems, or software provided by others; (6) assign or cancel this Agreement; or (7) transfer parts or Software from other Agfa Systems to the System and Software covered by this Agreement. If Customer adds any Agfa option to the System or Software during the term of this Agreement, Customer agrees to purchase System Maintenance and Software Support for that option at the then applicable rate. Customer agrees to maintain the Software at the revision level deemed necessary by Agfa. Customer acknowledges and understands the Odyssey, modern(s) and the conditions provided by Agfa remain the property of Agfa and are to be used solely for the purposes of providing remote diagnostics and enhanced services. Upon termination or expiration of this Agreement, Customer agrees to allow Agfa access to the Site to remove the Odyssey, modern(s) and the conditions. Agfa may suspend or refuse Hardware System Maintenance or Software Support, impose additional charges or terminate the Agreement if the Customer fails to perform its obligations under this Agreement.

**6. ACCESS:** Customer agrees to make the System and Software available for maintenance within a reasonable time after arrival of support personnel. Customer shall not remove the System or Software from Site without the prior written consent of Agfa. If this consent is given, Agfa will install the System and Software at customer's expense after relocation.

**7. SITE REQUIREMENT:** Customer agrees to provide a Site which meets Agfa's environmental and electrical specifications, including a source of electric power consisting of either a separate electric line installed from the main junction box for each unit of the system(s) or an Agfa authorized power conditioning device. To permit continuity of support under this Agreement, the Customer will not remove the System or Software from the Site without the prior written consent of Agfa. In addition to any other remedies, Agfa reserves the right to adjust the price temporarily discontinue Support under this Agreement or terminate the Agreement if the System or Software is so removed.

**8. MAINTENANCE AND SUPPORT LIMITATIONS:** System Maintenance and Software Support are contingent upon the System and Software being unmodified and properly maintained at the latest revision level. If the System and Software are not under warranty immediately prior to the effective date of this Agreement, Agfa may inspect the System and Software to determine whether they are in proper operating condition and at the latest revision level. This inspection and any repairs, adjustments or updates deemed necessary by Agfa shall be made at Customer's expense prior to commencement or continuation of System Maintenance and Software Support.

**9. PARTS:** Agfa will supply replacement parts it considers necessary on an exchange basis. PARTS OR SYSTEMS MAY BE NEW, SERVICEABLE USED, OR REPROGRAMMABLE ITEMS EQUIVALENT TO NEW IN PERFORMANCE.

**10. WARRANTY EXCLUSION:** Agfa makes no warranty of any kind under this agreement, either expressed or implied, including warranties of merchantability and fitness for a particular purpose.

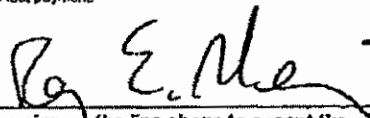
**11. LIMITATION OF LIABILITY:** Customer's sole remedy for any breach by Agfa shall be repair performance of any required System Maintenance or Software Support. In NO event shall AGFA be obligated to provide replacement parts, equipment or software. In NO event will AGFA be liable for: (1) Lost Profit, Lost Data or any other INCIDENTAL, or CONSEQUENTIAL DAMAGES; (2) Damages caused by Customer's failure to perform its obligations; (3) Damages caused by operator error or by repairs or alterations done without the prior written approval of AGFA. Agfa will be liable for personal injury caused solely by the negligence of its employees.

**12. APPLICABLE LAW:** This Agreement and the rights of the parties hereto and any other agreement or transaction between the parties hereto shall be governed by the laws of the Commonwealth of Massachusetts. The Customer hereby irrevocable consents to the exclusive jurisdiction of the Courts of the Commonwealth of Massachusetts, or the Federal Court in the Eastern District of Massachusetts, in connection with any action or proceeding arising out of or related to this Agreement or any other agreement or transaction between the parties hereto. In any such litigation, the Customer waives personal service of any summons, complaint or other process and agrees that service may be made by certified or registered mail to it, at the address provided herein. The Customer waives trial by jury in any litigation arising out of or related to this Agreement or any other agreement or transaction between the parties hereto.

**13. FORCE MAJEURE:** Agfa shall have no obligations hereunder for repairs, maintenance, or replacements caused by operator error, maintenance, or replacements caused by operator error, maintenance of the System or Software by others without authorization from Agfa, acts of God, or other events beyond the control of Agfa.

**14. GENERAL:** This Agreement is not assignable or transferable by customer without the prior written consent of Agfa. Agfa may assign or delegate its performance hereunder.

This is the complete Agreement between the parties and merges all prior discussions and negotiations. No waiver or change of any term or condition shall be effective unless made in writing and signed by persons so authorized by Agfa and Customer. The invalidity, unenforceability, or illegality of any provision of this Agreement shall not affect the validity, enforceability, or legality of any other provision. All obligations of the parties are subject to events beyond their reasonable control. This Agreement becomes effective upon acceptance by Agfa. No action, regardless of form, may be brought by either party more than one (1) year after the cause of action has accrued, except that a suit for non-payment may be brought more than one (1) year after the date of last payment.



Please sign on the line above to accept the  
Terms and Conditions of this Agreement.

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